

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
RALPH H. EDWARDS and) Bankruptcy Case No. 94-30649
MARY H. EDWARDS,)
)
Debtors.)

OPINION

This matter having come before the Court on a Motion to Enforce Stay and for Sanctions filed by Debtor, Ralph H. Edwards, and on a Response thereto filed by the Secretary of the State of Illinois; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The Court finds the material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. On June 17, 1994, the Debtors filed for relief under Chapter 7 of the Bankruptcy Code. An Order for relief was entered on June 17, 1994, staying all collection actions pursuant to 11 U.S.C. § 362.

2. Among their creditors, the Debtors scheduled, as an unsecured priority debt, the claim of the Illinois Securities Department, an agency of the Secretary of the State of Illinois, in the amount of \$2,500.

3. The fine in question was imposed by the Securities Department for violation of Illinois Securities Law.

4. The fine, as imposed by the Secretary of the State of Illinois through administrative law process, was affirmed by the Circuit Court for the Fifth Judicial District and an appeal is presently pending before the Court of Appeals for the Fifth District.

5. On August 9, 1994, the Securities Department sent a letter to counsel for Debtors, George Huber, indicating that it was the position of the Securities Department that the fine imposed against the Debtor, Ralph H. Edwards, was a non-dischargeable debt in a Bankruptcy proceeding and that the Debtors' failure to pay such a fine could result in a collection action.

6. On August 19, 1994, the Debtor, Ralph H. Edwards, filed the instant Motion to Enforce Stay and for Sanctions asking that the Court find the Illinois Securities Department in violation of the automatic stay under 11 U.S.C. § 362 based upon the letter sent to Debtors' counsel bearing the date of August 9, 1994.

Conclusions of Law

The Debtor, Ralph H. Edwards, bases his Motion upon his assumption that the letter from the Office of the Secretary of State, Securities Department, dated August 9, 1994, to Debtors' counsel was a collection effort in violation of 11 U.S.C. § 362. In support of his position, the Debtor cites the case of Roger Woodside v. County of Williamson, Illinois, Bankr. Case No. 92-41365, in which Judge Meyers issued a January 10, 1994, Opinion finding Williamson County, Illinois, in violation of the automatic stay under 11 U.S.C. § 362

in its efforts to collect a traffic fine during the period of the automatic stay. The Court has carefully reviewed the Woodside Opinion and finds that, while it agrees with the conclusions of law reached by Judge Meyers and the application of the law to the facts in the Woodside case, it finds that the facts in the present case are clearly distinguishable from the facts in the Woodside case. As such, the ruling in Woodside should not apply in this instance. In Woodside it is clear that a collection effort was being made and that that effort was made at a time when the Williamson County officials were well aware that the debtor was in bankruptcy. In contrast to the facts in Woodside, the Court finds that, in the instant case, there have been no actual efforts to collect the fine as imposed by the Office of the Secretary of State. The Court finds that the letter, dated August 9, 1994, is merely a statement of the position of the Office of the Secretary of State as to the dischargeability of the fine in question and a notification to the Debtor that some type of collection action may be maintained in the future.

Having found that the letter from the Office of the Secretary of State, dated August 9, 1994, is not, in fact, a collection effort, the Court thus finds that there has been no violation of the automatic stay under 11 U.S.C. § 362. The Court, however, notes that any such type of collection effort is barred during the pendency of the automatic stay by 11 U.S.C. § 362(b)(5). The Court finds that the automatic stay should continue to be enforced as against any collection actions by the Office of the Secretary of State during the pendency of the automatic stay. As such, the Court finds that

Debtors' Motion to Enforce Stay and for Sanctions should be allowed to the extent that the Court will find that the automatic stay should be enforced during its pendency as to the collection actions of the Office of the Secretary of State, Securities Department, but should be denied as to the request for sanctions in that the Court finds that there was no actual collection effort made in violation of the automatic stay.

ENTERED: September 12, 1994.

/s/ GERALD D. FINES
United States Bankruptcy Judge